

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF MARYLAND

KIM K. SUMNER,

Plaintiff

v.

MARYLAND JUDICIARY/

Defendant

Civil Case No. CCB13-539

* FILED
LOGGED ENTERED
RECEIVED

AUG 02 2013

DEPUTY

OPPOSITION TO MOTION TO DISMISS/SUMMARY JUDGEMENT

I have moved from 153 W. Main Street, Apt #1, Westminster, MD 21157 on July 16, 2013.

I have been to the old residence as late as Monday, July 29, 2013, and did not receive Defendants' Motion to Dismiss/Summary Judgment. I did visit a Lawyer, FJ Collins, on Thursday, July 25, 2013 to discuss my case and Mr. Collins pulled down the MOTION TO DISMISS from his computer. I did not know until that time that a Motion was filed.

Respectfully submitted,


Kim K. Sumner, Plaintiff

I certify that copy of Opposition of Motion to Dismiss/Summary Judgement was mailed overnight pre-paid to: H. Scott Curtis, Assistant Attorney General, 200 St. Paul Place, 20th flr, Baltimore, MD 21202

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Response to allegations of Summary Judgement I refute:

Facts, Page 2, top of Page 3.

Second Paragraph Page 3, " On March 1, 2011, Mr. Jones met with Judge John R. Hargrove Jr. "Administrative Judge" , of Baltimore City, District 1. After the meeting with Mr. Jones, the Administrative Judge made arrangements so that the Plaintiff would have no further contact with the Administrative Clerk (Lonnie Ferguson)".

My Response: There was no arrangement initiated by Judge Hargrove Jr., to limit the contact with Administrative Clerk, Lonnie Ferguson. When I filed the internal AOC complaint, Mr. Ferguson frequently was downstairs in Angela Naylor's office next to mine (Exhibit 1 &2 Emails) I went to Larry Jones and requested limited contact with Mr. Ferguson. If Mr. Jones went to Judge Hargrove Jr., it is because I requested it, not because either Judge Hargrove Jr. or Lavone Grant, Deputy Administrative Clerk offered this accommodation to me during the investigation.

Page 3, Page 4 The Final Determination of Larry Jones AOC:

"On August 2, 2011, Mr. Jones made a final investigative determination that Plaintiff had been sexually harassed, in violation of the Judiciary's Policy on Equal Employment Opportunity and Harassment, because the Administrative Clerk gave her six pornographic DVDs and requested she that she search the Internet for men's underwear. Mr. Jones further determined that the Administrative Clerk (Lonnie Ferguson) had intimated Plaintiff by spending undue amounts of time in her office and having her order movies for him. Mr. Jones also determined that Plaintiff's request of Mrs. Grant to restrict the Administrative Clerk from her office was not handled in accordance with the Policy. Based on his investigation, Mr. Jones concluded that the Plaintiff had not been subject to retaliatory treatment by the Administrative Clerk."

Response: I handed to Mr. Larry Jones six pornographic Dvd's that have since "been lost" by the OFP; I also gave him documentation of what I considered retaliatory behavior by the

Administrative Clerk, Lonnie Ferguson: 1. He had his assistant call me at home after hours looking for a form that he said he didn't get (it was on his desk); 2. He told co-workers what a poor job I was doing "Kim, he is always dogging you". 3. He stood in my office doorway and said "Somebody told me you did (he uses an instance which is against the Policy)"; 4) He was making photocopies of information completed by me if there was an error on it. I found out a year or so later after filing the internal AOC complaint with Mr. Jones, that he and Lonnie Ferguson, had been friends for many years.

Page 5 "A Judiciary's Response to the Internal Complaint"

"After reviewing the information Mr. Jones provided to them as part of the OFP investigation, the Administrative Judge and Chief Judge Clyburn determined that, effective August 24, 2011, The Administrative Clerk would be suspended, without pay, for 30 Days."

Response: Chief Judge Ben Clyburn went to high school with Lonnie Ferguson, played basketball with him; they have been friends for decades; Judge Hargrove Jr. has been friends with Lonnie Ferguson for decades; Lonnie Ferguson used to be his boss when they were commissioners, Lonnie Ferguson dated Judge Hargrove Jr.'s sister. Mr. Ferguson has powerful, influential friends which have enabled him to systematically continue the debasing, demeaning, behavior towards women for decades. How can you have confidence in the integrity of the process sanction when they are all friends and protect each other? Lonnie Ferguson has been suspended three times, he has had sexual relationships with multiple women at the same work location at the same time. He has transferred out those women that he is through with or women that fight him and try to report him. The pornography, which is "lost", tells the story. This pornography is not "fantasy". This is hardcore degregation of women: two black men with a white woman, or two white men with a black woman, hands on their throats choking them while they engage in sexual activity. A 30 day suspension for this long term, perverted behavior towards women is deplorable considering the gravity and ongoing occurrence of Lonnie Ferguson's behavior. See Exhibit 3 of the email I sent to Judge Clyburn after learning of the 30 day suspension. They (Judge Clyburn, Judge Hargrove, and Administrative Judge before Judge Hargrove) have allowed disparate treatment among women to continue for years which undermines the confidence of the employees and the public in the judiciary as well as threatens the trust and integrity of the judiciary.

End of page 5, there is a footnote regarding Lavone Grant who did not report the sexual harassment in violation of the Policy and in violation of a direct order from Chief Judge Bell, it says "Sharon Ball (Executive Director of Judiciary's Human Resources Department); met with Mrs. Grant at which time she received a "Counseling Memorandum" regarding her failure to report the Plaintiff's complaints (as ordered by Chief Judge Bell, Exhibit 2) to the proper authority --- notwithstanding the Plaintiff's request that she not do so".

Response to Foot Note: When I requested Mrs. Grant keep a "secret", I also requested that if Mr. Ferguson did not retaliate with my employment, I would do nothing about this. However, Mr. Ferguson did. So any "secrets" requested were null and void when he/they went after my job. I myself reported the behavior because Mrs Grant did not, and I personally found her to be untrustworthy.

Additionally, Mrs. Grant is a well-paid Deputy Administrative Clerk for the Maryland Judiciary. It is incumbent upon Mrs. Grant to follow an Administrative Order given by Chief Judge Bell. (see exhibit 4); She did not. Not because of any loyalty to me about keeping a "secret", but because she was protecting Lonnie Ferguson, the Administrative Clerk.

Also, Ms. Ball's "Counseling Memorandum". I have never heard of such a thing. A "Warning" letter is the first step of progressive discipline, then a Reprimand which goes into the employees' personnel file. A "Counseling Memorandum" and "Warning" can be thrown in the garbage can and will not ever be traced back to the employee. Given Mrs. Grant's infraction of not following company policy, not following a direct Administrative Order from Chief Judge Bell, and covering up and hiding sexual allegations she knew to be true, I am surprised a "Counseling Memorandum" was the remedy for the situation. (I am told Ms. Ball and Mrs. Grant live by one another and use the same track for walks.)

Last paragraph, PG 5 top of Page 6: "On September 1, 2011, Plaintiff sent Ms. Grant, the Administrative Judge and Ms. Ball a written proposal in which she requested that her office be moved from the Borgerding Court District Court Building to a new Baltimore City District Court facility. The Shillman Building, located at 500 Calvert Street, which was undergoing renovations. Plaintiff stated that she was requesting the transfer because she did not want to work in the same building with the Administrative Clerk, Lonnie Ferguson once he returned from the 30 day

suspension. Upon receipt of the proposal, the Administrative Judge began exploring its feasibility. In doing so, he learned that the renovations to the Shillman Building were not scheduled for completion until January 2012, at the earliest."

Response: The Shillman Building . Exhibit 5

I requested to be moved to the Shillman Building. I also was told by a colleague that there was space there for me. They (Judge Hargrove, Lavone Grant) said the building was not ready and there was not enough space; when the space was ready and occupied, I did not get any notification except an email that folks from the Civil Department were over there. They never took seriously me moving there even though they requested I write a proposal.

Page 6: "After additional discussion, Ms. Grant offered Plaintiff the option of moving into her office which because of its location, reduced the possibility that Plaintiff would come into contact with the Administrative Clerk, and which would afford her the privacy that her position as Human Resources Associate required. Initially, Plaintiff accepted the offer and said that she thought it was a good solution. On September 12, 2011; however, she informed the Administrative Judge and Ms. Grant that she no longer wanted to move into that office because it would be too cramped and small. She further informed them that she would like to stay in her first floor office and have the Administrative Clerk remain in his second floor office, with staff coming to his office to see him about work related matters, as had been the arrangement during the OFP(Office of Fair Practice)investigation. In response to concerns that Plaintiff expressed to Ms. Grant, the Administrative Judge, Ms. Ball and Mr. Jones (scheduled a meeting?) about the Administrative Clerk's scheduled return to work on September 26, 2011, the Administrative Judge arranged a meeting with Plaintiff, Ms. Ball, and Mr. Jones on September 20, 2011, to respond to Plaintiff's concerns, review the options, that had been explored regarding her office location and discuss the plans for the Administrative Clerk's return to work. The matter reviewed and discussed with Plaintiff included:

1. At her request she would remain in her office in the Borgerding District Court Building.
2. Her proposed move to the Shillman Building was under consideration. That facility however, was undergoing renovation and the original plans did not include provisions for the human resources function. She would be formally notified of the determination regarding her proposal.

3. At her request, the Eastside, Hargrove and Civil District Court facilities would not be considered as relation options for her. But, that, at any time she could reconsider make such a move.
4. At her request, Civil Division facility space was found for her office. Subsequent to the finding, such space however, she declined to move to that location.
5. The Administrative Clerk would remain in the Borgerding District Court building in order to perform his administrative duties, which might require him to come the the first floor to discuss court related matters.
6. The Administrative Clerk has been instructed that upon his return to work to have no contact with her at all. Unintentional conduct (contact?), however, might occur in the normal course of business during the work day.
7. Ms. Grant or her designee would continue to supervise her work and serve as her point of contact with the Administrative Office.
8. There would be periodic monitoring of the revised working arrangements.

Pertinent observations would be reported to the Judiciary's Department of Human Resources. At any time however, if she had any questions or concerns she should contact Ms. Ball.

Response: I refute most of the above: Moving to Mrs. Grant's Office she has a small office, no windows. My office is much larger with a window. I would be sequestered and in the back of the building. Again, an accommodation to please the Administrative Clerk, Lonnie Ferguson vs any action on Management's part to treat me a victim of Lonnie Ferguson. Also, by me moving in the back of the building would have enabled Mr. Ferguson to free access to most of the building and also would have given Mrs. Grant a bigger office with a window and her own private bathroom. This move had nothing to do with accommodating me.

The reason there was a meeting on September 20, 2011 is because I called Human Resources and refused to work with Lonnie Ferguson. (Exhibit 6) Judge Hargrove Jr., Lavone Grant, Larry Jones and Lonnie Ferguson, all thought once the 30 days were up, 'its business as usual'. I was never apologized to at this meeting for being exposed to the pornography by Lonnie Ferguson, in fact, Judge Hargrove was angry with me that I didn't want to work with him (Lonnie Ferguson). I was threatened by Judge Hargrove, Jr. to be put in the "basement at Eastside" if I

didn't like working with Lonnie Ferguson. I was offered the location at the Hargrove Court House on Patapsco Avenue, I declined due to its location.

Civil Court House – I asked Judge Hargrove to be transferred there. I am reading in the response, that I was offered this location and refused. I do not recall refusing the Civil location. I do not recall any kind of meeting with Judge Hargrove or Mrs. Grant about moving to the Civil location at 501 E. Fayette Street. I do recall after Civil had to be exterminated for bed bugs, that I said to Mrs. Grant, in jest, "Good thing I didn't go to Civil". I don't recall them ever making any serious/written or verbal intent as to me moving to Civil. I can only conclude that my remark about the bedbugs was taken out of context.

On June 18, 2012, I did send an email to Sharon Ball, Executive Director of Human Resources, and copied Judge Hargrove Jr., and Chief Judge Ben Clyburn about moving me anywhere (Exhibit 7) The work environment was bad after filing the complaint. I said I would go to Baltimore Co, Frederick, Balt City or Carroll County. I did not hear back from any of them. Just ignored. In February of 2013, I sent Sharon Ball another email about helping me move out of Baltimore City, because she never responded to the first one. She sent an email of current job vacancies which I get every Thursday anyway.

There was no response from Chief Judge Clyburn or Judge Hargrove Jr. The Maryland Judiciary, Office of Fair practice, Administrative Judge and Chief Judge have allowed Lonnie Ferguson to continue to supervise his victims – even after repeated violations and findings of sexual misconduct by female employees for over 10 years. That he is allowed to be my supervisor and to have his office in the same courthouse – has made my work environment miserable, stressful and a hostile place. Everyone in District 1 knows what he did.

The exhibits of emails that transpired prove that I was always asking to be moved. I was either ignored or placated. Emails attached show the "statement of facts" on page 7 presented by Defendant, (especially the meeting on September 20, 2011) are embellished to distort the truth.

It was me that protested working with Lonnie Ferguson, it was Sharon Ball, Director of Human Resources, after these protests were made to her by me that initiated the meeting on

September 20, 2011. Even though I was willing to go to another location, I shouldn't have to. The remedy would have been the termination of Lonnie Ferguson.

Page 7, Item 6 "The Administrative Clerk had been instructed that upon his return to work, he was to have no contact with her at all. Unintentional conduct (contact?) however, might occur, in the normal course of business, during the work day.

Response – I Do see the Administrative Clerk from time to time. I see him in the normal course of business, I walk past his car every morning, I see him at the mall at lunch time. He is invited to the same retirement parties for judges as I am. I don't usually attend these parties because he will be there. I did attend one for Judge Bass. Lonnie Ferguson is surrounded by everybody that knows everything he did, but still they all do nothing. All the judges know, the bailiffs know, my co-workers know. I left the retirement party early because of a panic attack. I have not attended another one since. Additionally, I cannot do my job. I have to meet someone in the stairwell for paperwork, I can't bring my orientations upstairs as I once use to. Lonnie Ferguson sits in his office and has the Lead Bailiff bring him coffee every morning. He is seen cutting up with Judge Hargrove Jr., He is called "Mr. Ferguson" and treated with respect. I am meeting people in stairwells; management (Mrs. Grant) has requested I not talk to staff about anything except "FMLA, Leave Bank"; even co-workers have confided in me that they were instructed to stay out of my office. I even have this written on my last evaluation about how I am to communicate with others. I have been given a "warning" on an issue which I find no basis for.

Page 8, A Warning, Judiciary's "0" Tolerance Policy, a "Warning" letter. Monitoring Lonnie Ferguson's behavior.

1. **0 Tolerance Policy – it's been going on for decades, 3 suspensions.**
2. **Monitoring Lonnie Ferguson's behavior - by whom? Judge Hargrove Jr. and Lavone Grant? They covered it up to begin with. (Please see exhibit 8 regarding the Judicial Disabilities complaint by Judge Devy Patterson Russell regarding Judge Hargrove's own inappropriate language and behavior towards women).**
3. **A warning letter – A warning letter does not even go into a personnel file. A letter of reprimand does, but a warning letter can be thrown in the garbage can and would never be**

seen if someone filed a Discovery Motion. Again, protecting the Administrative Clerk, Lonnie Ferguson.

4. Witness has come forward with knowledge and proof that Lonnie Ferguson, Respondent, sent emails of nude women to her. She still has those emails.
5. Knowledge of another female that Lonnie Ferguson, Respondent, has left love letters on her chair at work.
6. There is another pending law suit in Circuit Court in which Lonnie Ferguson, Respondent, is named for sexual Harassment.
7. There is a current/pending Federal EEOC investigation by another female employee that is on-going.
8. Attached is a Judicial Disabilities complaint from Judge Devy Patterson Russell attesting the inappropriate behavior of Judge Hargrove who did the penalty phase (along with Chief Judge Ben Clyburn) of Lonnie Ferguson, Respondent; ie page 9 of "Statement" of facts, item number 5. "Based on monitoring, the Judiciary reserved the right to take any all additional steps necessary to ensure no further inappropriate behavior or conduct occurred". The Disabilities Complaint was around the same timeframe as the OFP investigation of Administrative Clerk, Lonnie Ferguson.

Who is "monitoring" Mr. Ferguson's behavior? Sharon Ball, Executive Director of Human Resources, is in Annapolis. Lonnie Ferguson reports to Judge Hargrove. Based on Judge Hargrove's own inappropriate behavior (as indicated in the disabilities complaint from Judge Devy Patterson Russell) and Judge Hargrove's disrespectful inappropriate language and behavior towards women, the past has proven, that monitoring Lonnie Ferguson by Judge Hargrove is not an acceptable, appropriate, or even logical remedy. (See Judge Devy Patterson Russell's Judicial Complaint, Exhibit 8.)

Last, but not least – "A copy of the Judiciary's Policy on Equal Employment Opportunity and Harassment" was given to him.

Response: He has 37 year's service, (+ some) numerous violations, and three suspensions. Given his years of service, I suspect he knows the policy; given his record, he doesn't follow it.

Page 13 (I believe I have address and have documentation regarding work locations listed above on page 13) I am addressing "Thus, Plaintiff's allegation that she reached out to management with her concerns were to "no avail" is not supported by the evidence".

Response: Yes it is supported by email exhibits of evidence. Please see attached requests to Human Resources, Judge Clyburn, Judge Hargrove Jr. The Shillman building proposal. Also, I am the victim. I should not be required to leave (even though I was willing to leave – given the right location).

Also, "to no avail": I am still at 5800 Wabash Avenue; Lonnie Ferguson is still at 5800 Wabash Avenue.

Paragraph 2, Page 14 "The Civil Rights Commission" found no evidence of racial discrimination that Plaintiff was discriminated against.

Response: I have a file on retaliation and discrimination that refutes that. It is their determination, because of the standard of proof. I received my "Right to Sue" from the EEOC December 3, 2012, filed a complaint on February 29, 2013. That is true. I had four days left to file the complaint or it would go over the 90 days that I was allowed. I filed the complaint four days before the deadline because there was nobody but me to protect my honor as a woman.

Item 11 PLAINTIFF HAS FAILED TO STATE A CLAIM FOR SEXUAL HARASSMENT

"In order to establish a sexual harassment claim, a plaintiff must show that the harassment was "Unwelcome" 2) based on (a protected clarification) and 3) sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and 4) must show there is a basis for imposing liability for the harassment on the employer"

Response 1: When I discovered the pornography, I ignored Lonnie Ferguson, turned my back to him when he came in my office. When I needed his signature, I left paperwork with his assistant vs going in his office like I used to. When he used vulgar demeaning names for women, I admonished him, I shut my office door. At one point, I told him "you may use that language with some people, but you don't talk to me like that". He still kept coming in my office. In response to this, Mr. Ferguson

wanted to know if I wanted more movies. I then reported it to my supervisor and advised her of the situation. Then the retaliation started because he was asked to stay out of my office and you don't ask Lonnie Ferguson to stay out of your office. I believe Lavone Grant was aware of the retaliation and did nothing about it so I reported it myself.

2. ??

3. "Sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere."

Response: I wish I had the pornography to submit for evidence so it would be completely understood the severe and pervasive intent of the pornography given to me (OFP has lost it). I believe Lonnie Ferguson, knowing that I was going through divorce, (thus not sexually active) gave me that pornography as a way of "brainwashing" me to be open minded about sex and dating him, a black man which is why the dvds are inter-racial ; I believe he had me look up men's underwear site as further convincing and brainwashing because the website showed jock straps, etc. This pornography has invaded me psychologically and caused "side effects" which I believe Lonnie Ferguson did intentionally in order to convince me to have sex with him.

4. "There must be some basis for imposing liability for the harassment on the employer".

Response: The District Court of Maryland is responsible for my exposure to this pornography along with all the other issues of anger, anxiety, sadness, helplessness, frustration, mostly victimized. Victimized by not only Lonnie Ferguson, but by all the levels that were suppose to be there to protect me; Office of Fair Practice, Human Resources, Judge Hagrove Jr, Administrative Judge, Chief Judge Ben Clyburn, my supervisor, Lavone Grant. They all played a role in my victimization. There was nowhere else to go but to court; where we are today.

Lonnie Ferguson has been doing this for years while his influential, powerful friends have protected him. Not only the powerful, but also the soldiers that report to him (Lavone Grant), his friends Larry Jones of the OFP. This notion that the Judiciary has a 0 Tolerance is not what the facts show. They are accountable by the very omission of, not only doing nothing for decades, but for also covering it up.

Exhibit 1 & 2 are of two old emails that I sent to Larry Jones while Mr. Jones was active in doing the investigation against Lonnie Ferguson. It says everything about Lonnie Ferguson and his confident attitude and continued wreckless deviatebehavior towards women even while being investigated.

I write this email to Larry Jones thinking he is there to help me. I did not know at the time that he and Lonnie Ferguson were friends. I am anxious at the amount of time this investigation is taking. This email is dated July 27, 2011. At this late date, while Lonnie Ferguson does not call me on the phone for business issues, he is downstairs all the time in Angela Naylor's office (next to mine).

I write to Larry:

"Well, I guess nothing is happening (conclusion to the investigation), since Lonnie is over in Angela's office laughing and cutting up. Of course, I have the door shut here in HR, but it is still loud."

Email to Larry Jones:

"Judge Hargrove and Lavone are both gone and Lonnie has been down here constantly in Angela's office. Friday he was in there for two hours. He has been down here four times already. That's what he does, hangs out, goes up the stairs, comes down again for an hour, goes upstairs, eats lunch, comes back down stairs to hang out again. He was staying mostly upstairs for a while (probably because of you). Awhile back, I did ask Lavone about moving my office to the end one because of the fax machine in there and also because I won't be able to hear him (Lonnie Ferguson) from there.

This is a man under investigation when these emails are written. He doesn't care, he continues stalking a new woman in the office. He is a sexual deviate predator. No amount of "0 Tolerance", or "monitoring" will change him. He has been getting away with this behavior for years with the help of all those that enabled this behavior, condoned this behavior, or just turned their heads the other way.

*I solemnly swear under penalty of perjury that Opposition of the Motion of Summary
Judgment/Motion to Dismiss is the true and correct to the best of my knowledge, information and
belief.*

Kim K. Sumner

